

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JOEL B. SCHOONOVER,

Plaintiff,

v.

Civil Action no. 5:05cv141

JOHN S. KAULL, United States  
Magistrate Judge,

Defendant.

**MEMORANDUM OPINION and REPORT AND RECOMMENDATION  
THAT CASE BE DISMISSED WITHOUT PREJUDICE**

On August 3, 2005, the *pro se* plaintiff, Joel B. Schoonover, filed this 42 U.S.C. § 1983 action with this Court. On August 10, 2005, the Clerk's office mailed a letter to the plaintiff enclosing an Application to Proceed in forma pauperis and other documents explaining the filing fee requirements for this Court. On August 23, 2005, the Clerk received payment of \$5.00 toward the \$250.00 filing fee. However, in order to apply to proceed without prepayment of fees, the plaintiff must file an Application to Proceed with Prepayment of Fees, a certified copy of his trust account statement, a ledger sheet for the prior six months, and a consent to collection of fees from trust account. On November 3, 2005, this Court ordered the plaintiff to file a completed Application to Proceed Without Prepayment of Fees, a certified copy of his trust fund account statement, a ledger sheet for the prior six months, and a consent to collection of fees from trust account by December 3, 2005. As of December 20, 2005, the required forms have yet to be filed.**RECOMMENDATION**

In consideration of the foregoing, it is recommended that the plaintiff's Complaint be **DISMISSED** without prejudice.

Any party may file within ten (10) days of the date of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the District Judge of Record. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4<sup>th</sup> Cir. 1984); cert. Denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 f.2d 841 (4<sup>th</sup> Cir 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to all parties appearing herein.

DATED: December 27, 2005

/s/ James E. Seibert  
**JAMES E. SEIBERT**  
**UNITED STATES MAGISTRATE JUDGE**